IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 10672 of 2003

Between:

B.Saramma, w/o Late Veeraswamy,
R/o 4-6-85, Reddy Colony., Hanamkonda., Warangal District.

..... PETITIONER

AND

1 Sub-Inspector of Police, Police Station., Hanamkonda.
2 Superintendent of Police, Warangal.
3 T.Narayana,
R/o 3-9-640., Reddy Colony., Hanamkonda., Warangal District.
4 T.Prakash, s/o T.Narayana
R/o 3-9-640., Reddy Colony., Hanamkonda., Warangal District.
5 T.Satish, s/o T.Narayana
R/o 3-9-640., Reddy Colony., Hanamkonda., Warangal District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring that the action of respondents 1 and 2 in not registering the case against the respondents 3 to 5 and in not arresting on the basis of a report dated 2-5-2003 given by the petitioner is highly arbitrary bad and illegal and consequently direct the respondents 1 and 2 to register the case basing on the report dated 2-5-2003 given by the petitioner against the respondents 3 to 5 and another and take action as per law and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.PRABHAKAR REDDY

Counsel for Respondents 1 and 2: GP FOR HOME

The Court made the following :

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ORDER:

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The petitioner herein gave a complaint to the first respondent on 02.05.2003. In her complaint she alleged that she is the owner of the lands comprised in Survey Nos.62, 63, 64 and 69, having succeeded to the said lands after death of her husband, that when she and her daughters were making plots, respondents 3 to 5 herein abused the petitioner and her daughters by using caste name and also disputed rights of the petitioner. Therefore, she requested the first respondent to take action against respondents 3 to 5 as per law. It is alleged that though respondents 3 to 5 have committed a cognizable offence, the first respondent did not register the crime and therefore, she seeks a writ of Mandamus directing the first respondent to register the crime against respondents 3 to 5.

A counter affidavit is filed, *inter alia,* stating that the compliant given by the fifth respondent on 09.05.2003 was registered as Crime No.173 of 2003, and that after making entry in the General Diary of the Police Station about the complaint given by the petitioner, enquires were made and finding the allegations made by the petitioner unfounded, action was dropped.

The learned counsel for the petitioner submit that without registering a cognizable offence it was not proper for the first respondent to take up investigation and drop the action.

Reading the provisions of Section 154 to 157 of the Code of Criminal Procedure, 1973, it becomes unclear that it is always open to the Police to conduct a preliminary enquiry before registering a cognizable offence. Further, there is no denial of the legal position that when the Station House Officer, Incharge of the Police Station, refuses to register a complaint, a remedy of the person lies in approaching the Superintendent of Police, whereupon the Superintendent of Police has to take up the case, if a cognizable case is made out. Indeed, a Division Bench of this Court in **A.Omkar v. The Commissioner of Police, Hyderabad** considered this aspect and laid down as under.

> …A positive role to prevent commission of any crime and in case any crime is committed to bring to book the culprits is assigned by the Code to the Police under the various provisions of the Code of Criminal Procedure and Chapter XII thereof has contemplated information relating to the commission of a cognizable offence to be given either orally or in writing to the Officer in-charge of a Police Station, substance of which has to be entered in a book to be kept by such Officer in such form as the State Government may prescribe in this behalf. Sub-section (3) of Section 154 of the Code of Criminal Procedure provides as follows:-

> "Any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer-in-charge of the police station in relation to that offence."

Investigation how made of cognizable cases and by whom and under whose orders, are matters taken care of by Section 156 of the Code and the procedure in this behalf is prescribed under Section 157 of the Code of Criminal Procedure…

The petitioner filed the writ petition straightaway in this Court without approaching the Superintendent of Police. Therefore, if any redressable grievance survives, it shall be open to the petitioner to approach the Superintendent of Police.

The writ petition, with the above observation, is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

07.07.2005

vs

To

1 Sub-Inspector of Police, Police Station., Hanamkonda.
2 Superintendent of Police, Warangal.
3 Two CCs to the G.P for Home, High court of A.P., Hyderabad(O.U.T)

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